

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
GREENVILLE DIVISION**

In re:

CAH ACQUISITION COMPANY #1, LLC, d/b/a  
WASHINGTON COUNTY HOSPITAL,

Debtor.

Case No. 19-00730 5-JNC

## Chapter 11

In re:

CAH ACQUISITION COMPANY 7, LLC, d/b/a  
PRAGUE COMMUNITY HOSPITAL,

Debtor.

Case No. 19-012985-5-JNC

## Chapter 11

In re:

CAH ACQUISITION COMPANY 12, LLC, d/b/a  
FAIRFAZ COMMUNITY HOSPITAL,

Debtor.

Case No. 19-01697-5-JNC

Chapter 11

In re:

CAH ACQUISITION COMPANY 16, LLC, d/b/a  
HASKELL COUNTY COMMUNITY HOSPITAL.

Debtor.

Case No. 19-016971227-5-JNC

## Chapter 11

**AFFINITY HEALTH PARTNERS LLC'S  
PARTIAL JOINDER TO TRUSTEE'S MOTION AND REQUEST FOR HEARING**

Affinity Health Partners LLC (“Affinity”) hereby files this *Partial Joinder to Trustee’s Motion and Request for Hearing* (the “Joinder”) to the *Trustee’s Motion for (I) an Order Confirming that (A) Certain Stimulus Funds were Used in Accordance with Applicable Terms and Conditions and (B) Trustee May Transfer Any Remaining Stimulus Funds to Purchasers; and*

(II) an Order Eliminating any Liability of Trustee and Debtors' Estates for Use of Stimulus Funds filed on May 15, 2020 [Docket No. 791] (the "Motion"), in part, seeking to (i) allocate and distribute \$3,563,199.59 received by Washington Community Hospital (defined below) pursuant to the CARES Act, and (ii) confirm the Trustee's immediate transfer \$2,659,421.32 of the CARES Act funds to Affinity.

### **BACKGROUND**

1. On February 19, 2019, three creditors of now debtor CAH Acquisition Company #1, LLC d/b/a Washington Community Hospital (the "Washington Community Hospital") filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Court. On March 15, 2019, this Court entered its Order converting the Washington Community Hospital case to a case under Chapter 11 of the Bankruptcy Code. Concurrent with those filings and orders, an affiliate of Affinity was operating Washington Community Hospital.

2. On February 22, 2019, during the Chapter 7 case, the Court appointed Thomas W. Waldrep, Jr. as the interim trustee for Washington Community Hospital. On March 15, 2019, upon conversion of the Chapter 7 case to Chapter 11, the interim trustee was appointed as Chapter 11 Trustee for Washington Community Hospital pursuant to section 1104 of the Bankruptcy Code. No official committee was appointed in this case.

3. On February 7, 2020, the Court entered an *Order (A) Approving Sale Free and Clear of All Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Lease, and (C) Granting Related Relief* [Docket No. 686] (the "Sale Order") approving the sale of Washington Community Hospital to Affinity. On April 20, 2020, the Trustee and Affinity closed the court-approved sale transaction.

4. On May 15, 2020, the Trustee filed the Motion and an ex parte motion to shorten notice of the Motion [Docket No. 792] (the “Motion to Shorten Notice”). The Court granted the Motion to Shorten Notice the same day, setting a hearing on the Motion for May 21, 2020.

5. On May 18, 2020, the Trustee filed a Notice of Trustee’s Motion [Docket No. 802]. The Trustee filed an Amended Notice on May 19, 2020 [Docket No. 803] (collectively the “Notices”). Pursuant to the Notices, a telephonic hearing will be conducted upon a response and request for hearing by a part-in-interest in writing by May 20, 2020 at 5:00 p.m. (prevailing Eastern Time).

### **JOINDER**

6. Pursuant to the CARES Act, signed into law on March 27, 2020, the Department of Health and Human Services (“HHS”) has, through May 6, 2020, distributed \$3,563,199.59 to the Washington Community Hospital. In its Motion, the Trustee makes several statements, including but not limited to, the “sale” of the CARES Act funds to Affinity and whether the Asset Purchase Agreement approved by the Sale Order contemplates or applies to the CARES Act funds at issue.<sup>1</sup> In addition, the Motion sets forth its analysis for dividing the CARES Act funds based upon non-exclusive guidance from HHS. Affinity does not endorse or adopt the Trustee’s arguments and analysis as its own and reserves the right to contest these and related issues as they apply to the Asset Purchase Agreement and Sale Order.

7. Nevertheless and reserving its rights, in the interest of finality as it relates only to the CARES Act funds at issue, Affinity joins the Trustee’s request to allocate \$3,563,199.59 distributed to Washington County Hospital in the following manner: \$903,778.27 to the Trustee to reimburse it for expenses it incurred fighting COVID-19 or for related lost revenue, and

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<sup>1</sup> Motion at par. 15 and 19.

\$2,659,421.32 to Affinity to reimburse it for expenses it incurred fighting COVID-19 or for related lost revenue. As part of the division of the CARES Act funds as noted, Affinity requests the Trustee continue to provide it with any and all documentation Affinity may need to satisfy the terms and conditions promulgated by HHS (the “Terms and Conditions”).<sup>2</sup>

8. The Trustee’s Motion to Shorten Notice notes that a recipient hospital, such as Washington County Hospital, must attest to the Terms and Conditions of the CARES Act funds by May 25, 2020, within forty-five (45) days of receipt of funds.<sup>3</sup> Relying on guidance from HHS.gov, Affinity understands it must receive and attest to all funds originally received by Washington County Hospital on April 10, 2020, one day earlier, on May 24, 2020, in order to satisfy the relevant terms and conditions of the Provider Relief Fund. HHS.gov, HHS Extends Deadline for Attestation, Acceptance of Terms and Conditions for Provider Relief Fund Payments to 45 Days (May 7, 2020), <https://www.hhs.gov/about/news/2020/05/07/hhs-extends-deadline-attestation-acceptance-terms-and-conditions-provider-relief-fund-payments-45-days.html>.

Because and to the extent Affinity must receive and attest to the CARES Act funds by May 24, 2020, for at least the funds received on April 10, 2020, Affinity requests the Court order the Trustee to transfer the designated funds as soon as possible, but at least on or before the deadline of May 24, 2020.

9. In addition, pursuant to the Notices and as a party-in-interest in the above-captioned cases, Affinity requests a hearing on the Trustee’s Motion.

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<sup>2</sup> Affinity is cognizant that the Terms and Conditions may change as HHS updates and revises its guidance. The documentation Affinity requests related to the CARES Act funds shall encompass updated and revised Terms and Conditions from HHS and documentation requirements set forth by other government agencies, as applicable.

<sup>3</sup> Motion to Shorten Notice at par. 3-5.

**WHEREFORE**, Affinity reserves all rights with respect the Motion, up to and including at the hearing thereon, and respectfully requests the Court (a) conduct a hearing on the Trustee's Motion, (b) enter an order (i) granting the Motion, approving the Trustee's distribution of CARE Act funds to Affinity as proposed; (ii) directing the Trustee to provide Affinity with all related documentation needed to satisfy the Terms and Conditions; and (ii) directing the Trustee to provide the CARES Act funds immediately, but at least on or before May 24, 2020, and (c) grant Affinity such other and further relief to which it may be justly entitled.

Dated: May 19, 2020

Respectfully submitted,

**KATTEN MUCHIN ROSENMAN LLP**

/s/ Rebecca K. Lindahl

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*Counsel for Affinity Health Partners LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2020, a true and correct copy of the foregoing pleading was electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in these cases pursuant to the Electronic Filing Procedures in this District.

/s/ Rebecca K. Lindahl

Rebecca K. Lindahl